



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

<b>Complaint no.:</b>	<b>1230 of 2020</b>
<b>Date of filing:</b>	<b>27.10.2020</b>
<b>First date of hearing:</b>	<b>10.02.2021</b>
<b>Date of decision:</b>	<b>08.02.2024</b>

Pawan Kundra

S/o Sh. Baldev Raj

R/o VPO Dhotia, District- Tarantaran

Punjab

.....COMPLAINANT

Versus

M/s Aegis Value Homes Ltd,

Having its corporate office at 243, Sector-12, City Centre, Karnal through its  
Managing Director

.....RESPONDENT

**CORAM:**

**Nadim Akhtar**

**Member**

**Dr. Geeta Rathee Singh**

**Member**

**Chander Shekhar**

**Member**

**Present:** - Mr. Rahi Mehra, counsel for the complainant through VC.

Mr. Neeraj Goel & Mr. Tarun Ranga, Counsels for the  
respondent through VC.

**ORDER (NADIM AKHTAR-MEMBER)**

1. Present complaint has been filed on 27.10.2020 by complainant under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

**A. UNIT AND PROJECT RELATED DETAILS**

The particulars of the project, the sale consideration, the amount paid by the complainant, date of handing over of the possession, if any, have been detailed in the following table:

S.No.	Particulars	Details
1.	Name of the project	Residential colony names as Aegis Woods Scheme
2.	Name of the promoter	Aegis Value Homes Ltd
3.	RERA registered/not registered	Unregistered
4.	Unit no. allotted	R-101, First floor in Rose Tower
5.	Unit area	700 sq. ft. approx
6.	Date of allotment	20.03.2014
7.	Date of builder buyer agreement	Not executed



8.	Possession clause in allotment letter	“Clause 14 of Provisional Allotment letter Developer shall make all possible endeavour to hand over possession of the residential flat to provisional allottee within a reasonable time, may be within 42 months from date of booking,(i.e.28 december,2013)+ 6 months grace period”
9.	Due date of offer of possession	28.12.2017 including grace period
10.	Total sale consideration	₹15,59,250/-
11.	Amount paid by complainants	₹ 8,47,033/-
12.	Offer of possession	Not given.

**B. FACTS AS PER THE COMPLAINT**

2. That complainant booked an apartment measuring 700 sq ft in the respondent's project namely; "Aegis Woods Scheme" being developed by the respondent at Karnal, Haryana by paying Rs 1,50,000/- as the booking amount vide cheque no. 459553 dated 07.12.2013 and got the receipt number 00201 dated 28.12.2013 from the respondent. Copy of said receipt is annexed as Annexure C-2.

3. That thereafter respondent allotted an apartment bearing no. R-101, in Rose Tower to the complainant vide provisional allotment dated 20.03.2014



having approximate area of 700 sq. ft. for basic sale price of ₹ 15,59,250/-.  
Copy of the provisional allotment letter dated 20.03.2014 is annexed as annexure C-1.

4. That as per Clause 14 of provisional allotment letter, respondent was supposed to hand over possession within 42 months from the date of booking, i.e., 28, December 2013+ 6 months grace period. So, as per the terms of allotment the deemed date of possession works out to 28.12.2017. However, respondent has failed to handover possession to complainant till date for the reasons known to him.

5. Complainant has paid total amount of ₹ 8,47,033/- against the basic sale price of ₹ 15,59,250/-, however, respondent is not in position to offer possession as construction work has not completed at project site by the respondent. Moreover, the respondent is not in position to complete the project in near future as same can be substantiated by the fact that construction work is not going on at site from the last 3-4 years.

6. That the Complainant had approached the office of respondent on various occasions, to ascertain the status of the project and delivery of the possession of the flat/apartment, however, no satisfactory response has been given by the respondent, therefore, the assurances being extended by respondent are wholly false, misleading, vague and misconceived as no construction till date has been started so far. Needless to add that the rest of the project work including the common facilities as highlighted in the



layout/site plan projected to the flat buyers has not yet commenced, as such the project is not likely to be completed within the near future.

7. So, now complainant does not wish to remain in the project and thus claiming refund of his paid amount with interest under Section 18 of Real Estate (Regulation & Development) Act, 2016.

**C. RELIEFS SOUGHT**

8. Complainant has sought following reliefs against respondents:

- a. In the event that registration has been granted to the respondent-promoter for its scheme/project namely; "Aegis Woods" at Karnal, District Karnal under RERA, it is prayed that the same may be revoked under Section 7 of RERA for the violations as detailed.
- b. In exercise of the powers under section 35, direct the respondent promoter to place on record all statutory approvals and sanctions of the project in question.
- c. In exercise of the powers under section 35 of the Act read with Rule 21 of the Haryana Real Estate Rules, 2017, to provide complete details of EDC/IDC and statutory dues to the competent authority and pending demands, if any.
- d. To compensate the complainant for the delay in the project and refund the entire amount of Rs 8,50,000/- (correct figure is Rs 8,47,033/-) alongwith interest @24% per annum from the date of respective payments.



- e. To pay compensation of Rs 10,00,000/- (Rupees Ten Lakhs) on account of harassment, mental agony and undue hardship caused to the complainant on account of unfair practices, deficiency in service and fraudulent misrepresentations.
- f. To pay a sum of Rs 50,000/- towards the cost of litigation expenses.
- g. Pass any other order or directions appropriate in the facts and circumstances of the case.

**D. REPLY SUBMITTED ON BEHALF OF RESPONDENT**

- 9. A short reply dated 27.05.2023 has been filed by the respondent stating therein that license no. 20/38/2010-3CI dated 30.03.2015 was obtained by JD Universal Infra Limited for 24.94 acres and respondent and JD universal entered into joint development agreement for jointly developing the property of Aegis Woods in the land measuring 1.46 acres out of 24.94 acres.
- 10. That External Development Charges (EDC) were to be paid by M/s JD Universal Infra limited to Directorate of Urban Local Bodies, Panchkula but JD universal failed to pay the above mentioned charges and hence, the project was sealed by the government, though the project is complete to extent of 85%.
- 11. That the respondent is not at fault in delaying the project in any manner. However, the balance payment of the complainant is pending towards the unit in question.



**E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT**

Ld counsels for both the parties reiterated their submissions as mentioned in the complaint and reply respectively. Ld. Counsel for complainant made a statement that correct paid amount is Rs 8,47,033/- so order be passed taking said amount into consideration. Ld. Counsel for respondent submitted that respondent does not wish to file detailed reply.

**F. ISSUE FOR ADJUDICATION**

Whether the complainant is entitled to refund of amount deposited by him along with interest in terms of Section 18 of Act of 2016? If yes, then the quantum thereof including interest.

**G. OBSERVATIONS AND DECISION OF AUTHORITY**

12. Authority has gone through rival contentions. In light of the background of the matter as captured in this order and also the arguments submitted by both the parties, Authority observes that complainant booked a unit in the project of the respondent namely; "Aegis Woods Scheme" situated at Karnal and provisional allotment letter dated 20.03.2014 for unit no. R-101, Rose Tower was issued by the respondent in favour of the complainant. Against the basic sale price of ₹15,59,250/- complainant had paid total amount of ₹



8,47,033/-. It is pertinent to mention here that complainant in his complaint and respondent in his reply and allotment letter and receipts has not mentioned 'Sector' of Karnal in which project in question – Aegis Woods Scheme is situated. Complainant is aggrieved by the fact that despite depositing timely payments against the basic sale price, respondent has neither handed over the possession of the unit within the stipulated timeline, nor refunded the amount paid by the complainant so far.

13. Respondent had filed only short reply dated 27.05.2023 stating therein that the construction and development of the project got delayed due to fault of M/s JD Universal Infra Limited in not paying the EDC (External development charges) on time; now the project is near completion at it has already been completed to the extent of 85%.
14. Perusal of reply dated 27.05.2023 reveals that respondent had neither disputed the provisional allotment dated 20.03.2014, nor the deemed date of handing over of possession and the payment of an amount of Rs. 8,47,033/- against basic sale price of ₹ 15,59,250/- paid by the complainant. Also, respondent has neither mentioned any date for completion of project in reply nor argued about the same. Further as per Clause-6 of the provisional allotment letter, allottee was liable to pay further amount of basic sale price only after approval of the layout plan and grant of all valid licences by the authorities to the developer.





Further, an intimation regarding above was to be given by the developer to the allottee. It is important to mention here that on the one hand, vide the said letter of provisional allotment, the promoter had allotted unit no. R-101, Rose Tower, measuring 700 sq.ft. in the project "Aegis woods Scheme", Karnal and on the other hand, the promoter in Clause-6 of the same allotment letter mentioned that the allotment is provisional as the layout/ building plans of the complex have yet not been approved by the competent authority. Further, the developer- Aegis Value Homes Pvt Ltd has not placed on record a valid license for the project. It implies that the promoter had provisionally allotted a unit to the complainant without even having statutory approvals to construct and develop an affordable housing colony in Karnal. Thus, the promoter allotted a unit and collected payment against it even without having the competency and requisite permission to do so.

15. During the course of hearing of complaint cases pertaining to Aegis Value Homes Pvt Ltd on 17.05.2022 inclusive of present complaint case, it was observed by the Authority that both parties i.e. respondent no. 1 and respective complainants failed to produce any document/evidence substantiating their claims w.r.t construction and latest stage of project. Respondent- Aegis value homes, even did not chose to file detailed reply in this matter. Therefore, the Authority in order to know clear picture regarding status of project had appointed



the Chief Town Planner, HRERA, Panchkula as the Local Commissioner vide its interim order dated 17.05.2022. Accordingly, CTP, HRERA, Panchkula submitted his report on 07.07.2022, wherein, it is mentioned that the promoter M/s Aegis Value Home Ltd. is developing an “affordable group housing colony” namely; “Smart Homes Karnal” on the land measuring 5.653 acres in Sector 32-A, Karnal and the same is also registered with the Authority vide registration No.265 of 2017, which was valid upto 23.07.2023. It is also mentioned in the report that the Director of the respondent company, (Shri Divey Sindhu Dhamija) informed that the said project was being marketed/promoted in different names such as “Ananda Phase-I”, “Aegis Scheme”, “Aegis Smart Value Homes”. Further, it has been mentioned in the report by the local commissioner that another project was being executed by Aegis Vaue Homes Pvt Ltd as informed by the Director, as a part of Town Planning Scheme approved for JD Universal measuring 25 acres approved by Urban Local Bodies Department. This group housing pocket (Part of the above 25 acres) is being constructed on the land measuring 1.46 acres comprising of 104 flats and is being marketed as Aegis Woods. In respect of this project, it has been further mentioned in the report that no registered collaboration agreement/power of attorney has been executed by promoter-Aegis Value Homes Pvt Ltd with JD Universal



who have been granted permission for the said Town Planning Scheme. With respect to latest status of the project, it is submitted that the structure of the project is complete and project is 40% complete but no construction has been taken place at site from the last 4 to 5 years. Considering the aforesaid report, it is ample clear that no construction work is carried out on site after completion of basic structure and there is no scope of possession even in the near future as respondent is not making any efforts to get it completed.

16. Further, as per clause-14 of the provisional allotment letter, possession was to be handed over within a period of 42 months from the date of booking, i.e., 28.12.2013, which comes to 28.06.2017 plus six months grace period, i.e., by, 28.12.2017. However, the respondent-promoter failed to complete the project and hand over the possession by the said date. Also, during the course of hearings, respondent has not disclosed a specific date for completion of project. Meaning thereby that respondent has failed to fulfill its duty to hand over possession of unit within stipulated time. This gives the right in favour of complainant to withdraw from the project and avail the relief of refund.
17. Further, Hon'ble Supreme Court in the matter of "*Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others*" in Civil Appeal no. 6745-6749 of 2021 has highlighted that the allottee has an unqualified right to seek refund of the deposited amount if



delivery of possession is not done as per terms agreed between them.

Para 25 of this judgement is reproduced below:

*“25. The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed.”*

The decision of the Supreme Court settles the issue regarding the right of an aggrieved allottee such as in the present case seeking refund of the paid amount along with interest on account of delayed delivery of possession. As complainant wishes to withdraw from the project of the respondent, therefore, Authority finds it to be fit case for allowing refund in favour of complainant.



18. The definition of term 'interest' is defined under Section 2(za) of the Act which is as under:

*(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*

*Explanation.-For the purpose of this clause-*

*(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*

*(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;*

19. Consequently, as per website of the State Bank of India, i.e., <https://sbi.co.in>, the highest marginal cost of lending rate (in short MCLR) as on date, i.e., 08.02.2024 is 8.85%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.85%.
20. Rule 15 of HRERA Rules, 2017 provides the rate of interest which is reproduced as under:

*"Rule 15. Prescribed rate of interest- (Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19] (1) For the purpose of proviso to section 12; section 18, and sub sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal*



*cost of lending rate +2%: Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public”.*

21. From the above discussions, it is proved on record that the respondent has not fulfilled its obligations pertaining to handing over of possession of booked unit to the complainant cast upon it under RERA Act,2016. This entitles the complainant to seek refund of deposited amount along with interest. Thus, Authority deems it fit to award refund of paid amount with interest to complainant. Therefore, respondent will be liable to pay the complainant interest from the date the amounts were paid till the actual realization of the amount. Authority directs respondent to refund the paid amount of ₹8,47,033/- along with interest at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017, i.e., at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 % which as on date works out to 10.85% (8.85% + 2.00%) from the date amounts were paid till the actual realization of the amount. Authority has got calculated the total amount along with interest calculated at the rate of 10.85% till the date of this order and total amount works out to ₹ 16,69,514/-as per detail given in the table below:



Sr.no.	Principal Amount	Date of payment	Interest Accrued till 08.02.2024
1.	1,50,000/-	28.12.2013	1,64,757/-
2.	1,50,850/-	15.02.2014	1,63,493/-
3.	1,70,000/-	18.04.2015	1,62,670/-
4.	2,55,000/-	08.07.2015	2,37,865/-
5.	1,21,183/-	26.12.2016	93,696/-
Total=	8,47,033/-		8,22,481/-
Total amount to be refunded to the complainant = ₹ 847033/- + ₹822481/- = ₹ 16,69,514/-			

22. Further, the complainant is seeking compensation on account of mental harassment and undue hardship and cost of litigation. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "*M/s Newtech Promoters and Developers Pvt Ltd. V/s State of U.P. & ors.*" (supra,), has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainant is advised to approach the Adjudicating Officer for seeking the other reliefs of litigation expenses and compensation for harassment and mental agony.



23. In respect of relief clause no. a, b and c mentioned in para 9 of this order, it is to mention here that ld. Counsel for complainant has neither argued nor pressed upon these relief clauses. No mention of any sort in pleadings has been made by complainant against these reliefs. So, no order is passed against the said reliefs. Further, it is relevant to point out that complainant has claimed in his complaint interest @ 24%. The legislature in its wisdom in the subordinate legislation under the provisions of Rule 15 of the Rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

**DIRECTIONS OF THE AUTHORITY**

24. Hence, the Authority hereby passes this order and issue following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

(i) Respondent is directed to refund the entire amount of ₹8,47,033/- with interest of ₹ 8,22,481/- to the complainant.

It is further clarified that respondent will remain liable to pay interest to the complainant till the actual realization of the amount.





(ii) A period of 90 days is given to the respondent to comply with the directions given in this order as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017 failing which, legal consequences would follow against the respondent.

25. **Disposed of.** File be consigned to the record room after uploading of order on the website of the Authority.

  
.....  
CHANDER SHEKHAR  
[MEMBER]

  
.....  
DR .GEETA RATHEE SINGH  
[MEMBER]

  
.....  
NADIM AKHTAR  
[MEMBER]